

United States District Court
Eastern District of California

Keith A. Somers,

Plaintiff, No. Civ. S 05-0741 MCE PAN P

vs. Order

BPT Commissioner M. Perez, et al.,

Defendants.

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Plaintiff challenges the constitutionality of parole consideration proceedings before the Board of Prison Terms.

June 16, 2005, the court directed plaintiff to file a habeas petition that would supersede his April 27, 2005, amended complaint. Plaintiff objected, arguing he can elect to proceed under the civil rights statute. See Wilkinson v. Dotson, 125 S.Ct. 1242 (2005). Plaintiff is correct and the June 16, 2005, order is vacated.

April 18, 2005, plaintiff requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. However, the

1 certificate that must be completed by plaintiff's institution of
2 incarceration was not provided. Also, plaintiff has not filed a
3 certified copy of his prison trust account statement for the six
4 month period immediately preceding the filing of the complaint.

5 See 28 U.S.C. § 1915(a)(2).

6 Accordingly, the court hereby orders that:

7 1. The June 16, 2005, order directing plaintiff to file a
8 habeas petition is vacated.

9 2. Plaintiff shall, within 10 days, submit an application
10 to proceed in forma pauperis that complies with 28 U.S.C.
11 § 1915(a)(2). Otherwise this file will be closed.

12 Dated: November 17, 2005.

13 /s/ Peter A. Nowinski

14 PETER A. NOWINSKI
Magistrate Judge